

Policy Brief No. 9

Advocating Migrants' Rights
in Chile: Embracing
Opportunities and
Anticipating Challenges

Migration, Gender and Social Justice: Connecting Research and Practice Networks



This policy brief has been prepared within the IDRC-sponsored project 'Migration, Gender and Social Justice'

ISSN 2214-1316

Electronic copies are available at www.iss.nl



This work is licensed under the Creative Commons Attribution-No Derivative Works 3.0 Unported License. To view a copy of this license, (a) visit <http://creativecommons.org/licenses/by-nd/3.0/> ; or, (b) send a letter to Creative Commons, 171 2nd Street, Suite 300, San Francisco, California, 94105, USA

Project Partners



International Institute of Social Studies, Erasmus University of Rotterdam – The Netherlands



International Development Research Centre – Canada



Achieve – Action for Health Initiatives Inc – Philippines



Institute for Social Development Studies – Vietnam



Centre for Woman's Development Studies – India



Universidad Alberto Hurtado – Chile



Asian Institute of Technology – Thailand



Instituto de Investigaciones Sociales – Universidad de Costa Rica



Centro de Estudios Migratorios Latinoamericanos – Argentina



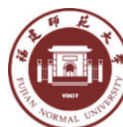
Université Gaston Berger de Saint-Louis – Senegal



El Colegio de la Frontera Sur – Mexico



Universitas Indonesia



Fujian Normal University – China



University of Western Ontario – Canada



Flasco – Dominican Republic



University of Leeds – United Kingdom

Groupe de Recherche sur les Femmes et les Lois au Sénégal



University of Windsor – Canada

Policy Brief No. 9

Advocating Migrants' Rights in Chile: Embracing Opportunities and Anticipating Challenges

Executive Summary

Structural and institutional constraints faced by non-governmental organizations (NGOs) make it difficult to advocate on behalf of Peruvian migrants in Chile. These constraints have provoked reactive rather than proactive strategic responses by NGOs in their promotion of migrants' rights. In addition, traditional notions of citizenship that exclude migrants have gone unchallenged by NGOs in Chile. Consequently, these organizations function as short-term service providers rather than as long-term advocates. This policy brief is based on research carried out in Santiago de Chile between 2008 and 2009. It suggests that international legal regimes and a culture of human rights in Chile provide many possibilities for Chilean NGOs to advocate on behalf of migrants' rights and to confront the Chilean government's regulation of those rights.

Policy Brief No. 9: Advocating Migrants' Rights in Chile: Embracing Opportunities and Anticipating Challenges

This policy brief is adapted from a chapter authored by Claudia Mora and Jeff Handmaker, "Migrants' Citizenship and Rights: Limits and Potential for NGOs Advocacy in Chile" in Truong et al. (eds) (2013) *Migration, Gender and Social Justice: Perspectives on Human Security* (Heidelberg: Springer). It has been prepared within the IDRC-sponsored project 'Migration, Gender and Social Justice', and is based on research undertaken in Chile for the project 'Advancing the Rights of Migrant Women in Latin America and the Caribbean' (2007–2010), coordinated by Tanya Basok and Nicola Piper, and funded by the IDRC.

For additional insight into the findings of this research, see:

Mora, Claudia (2009) "Estratificación Social y Migración Intrarregional: Algunas Caracterizaciones de la Experiencia Migratoria en Latinoamérica", *Revista Universum* 24(1): 128-143.

Mora, Claudia and Nicola Piper (2011) "Notions of Rights and Entitlements Among Peruvian Female Workers in Chile", *Diversities* 13(1): 5-18.

Introduction

The Southern Cone of Latin America has undergone significant shifts in the migration of people during the last few decades. While this migration has traditionally been south to north, and in particular towards North America and Europe, attention has increasingly shifted to migration taking place within the region. The reasons for this shift stem not only from contemporary economic and political crises, but are also due to restrictive immigration and border control policies in North America and

'The rapid increase in intraregional migration ... has been accompanied by migrants' social exclusion.'

Europe. Furthermore, migration to neighbouring countries demands lower money and time investments and involves more flexible entry requirements. The rapid increase in intraregional migration, however, has been accompanied by migrants' social exclusion. Many migrants are blocked, at a structural level, from claiming rights.

Peruvians in Chile form a distinct flow of migrants. They number 138,000 according to the Immigration Department of Chile, and their population has continued to grow since the 1990s. Migrants from Peru, 60% of whom are women, constitute mainly labour migrants travelling on an individual basis. Though they possess over 10 years of education on average, Peruvians are concentrated in precarious, low-paid, low-status occupations in Chile, largely due to prejudice and stereotypes held by employers and society at large. Most are recruited through informal channels to work in domestic service and construction work, under conditions that do not substantially improve their economic and social marginalization.

The increasing prevalence of Peruvian migration to Chile has not been accompanied by changes in the policy framework. Broad protection of migrants' rights in

'Broad protection of migrants' rights in Chile is lacking, and the advocacy response of civic organizations has also been limited.'

Chile is lacking, and the advocacy response of civic organizations has also been limited. This has left the growing Peruvian migrant population with a precarious legal status, resulting in restricted access to social services and virtually no participation in the public sphere.

This policy brief is based on research carried out in Santiago de Chile between 2008 and 2009 and on interviews with 35 key informants from organizations

that provide at least one service to immigrants in Chile. It addresses the structural and institutional barriers faced by NGOs assisting Peruvian migrants in Chile to advocate for migrants' rights. This policy brief also draws on an analytical framework for evaluating civic-state interactions, to evaluate the potential of promoting the rights of migrants and holding the state accountable to its international obligations. The brief shows that structural and organizational constraints exist and that they have provoked NGOs in Chile to act reactively, rather than to develop proactive and strategic advocacy positions and campaigns. It then proposes that NGOs recognize the possibilities opened up by international legal regimes to confront the Chilean government's regulation of migrants' rights. This critique of traditional notions of citizenship espoused by Chilean NGOs is intended to shed light on alternative models of representation that would broaden the service approach of NGOs to one of informed advocacy for the rights of migrants.

Research findings

Based on the empirical findings generated by the field research carried out with key informants from Chilean NGOs that provided at least one service to immigrants, it was determined that the organizations provided little to no advocacy on behalf of migrants. The findings furthermore reveal the implicitly prescribed notion of citizenship that defines a category of 'migrant' that

'Conventional notions of citizenship that attribute greater rights to those who are considered to be part of the ... nation clash with the realities of migration.'

denies the recognition of certain rights. The purpose of the study was therefore to explore the constraints that would *potentially* be faced by NGOs, should they decide to fulfil a more prominent advocacy role.

Among the findings, it became evident, firstly, that the boundaries of citizenship set by the nation-state clash with the realities of migration. Secondly, NGOs do not question this bounded notion of citizenship, resulting in migrant-focused organizations fulfilling the role of service providers instead of critical advocates. Thirdly, the positioning of NGOs as service providers rather than as critical advocates has confirmed the restrictive policies of the Chilean state. And fourthly, NGOs in particular fail to recognize the gendered nature of migration, and the policies designed to restrict migration, which leads to particular types of exclusion.

Conventional notions of citizenship that attribute greater rights to those who are considered to be part of the political community or nation clash with the realities of

migration. Citizenship can define who belongs and who is excluded. For example, access to benefits tends to be more limited among migrants or 'non-citizens', as compared with citizens.

In a globalized world involving conflicts and large, often sudden movements of people, these conventional distinctions between citizens and non-citizens are increasingly contested. For example, in terms of international human rights law—including the Migrants' Convention,

'The unquestioned acceptance of this bounded notion of citizenship ... is a significant obstacle to social advocacy for migrants ...'

which Chile is legally obliged to respect—migrants are entitled to a range of social benefits, including access to health and education. Furthermore, migrants should be guaranteed decent work conditions. These rights are connected with the idea that they should have the opportunity for a 'dignified life', according to the means and capacities of the 'host' society.

In short, the intensity and speed with which movements of peoples occur, together with their rights to equal protection, are not taken into consideration within conventional notions of citizenship. Moreover, there is a mismatch between the 'paper rights' contained within treaties and the ability to claim those rights, which must be corrected.

The unquestioned acceptance of this bounded notion of citizenship by civic actors, and particularly NGOs, is a

'... NGOs functioning merely as service providers are not able to realize their full potential as vital advocates for migrants' rights.'

significant obstacle to social advocacy for migrants and has resulted in organizations intensifying their position as service providers to migrants, rather than as representatives for migrants in legal and social processes that define social belonging and economic distribution. This has, consequently, restricted the scope of their activities and their potential as advocates.

In Chile, migrant organizations have not taken a strong advocacy role, and services provided tend to be specific and uncoordinated with other organizations or services. For example, some Chilean NGOs are sponsored by the Catholic Church and function as shelters to recently arrived migrants as well as placement agencies for domestic service work. Others are affiliated with universities in Santiago and provide basic legal and psychological services. There are also organizations that focus on the 'cultural integration' of Peruvian

migrants, and a few other organizations provide legal and financial assistance to the migrant community. With respect to women migrants, organizations provide services to prepare them for domestic work or to train them to assume their reproductive or family care-giving roles. While the provision of a wide range of services is valuable to the migrant community upon their entry into Chile, NGOs functioning merely as service providers are not able to realize their full potential as vital advocates for migrants' rights.

Chilean NGOs are just beginning to provide immigrants with basic tools to navigate and understand the structures, institutions and experiences in a society that is often hostile towards migrants, demonstrating their potential role as advocates, grounded in a deep human-rights consciousness in Chile. This is far from the present reality, with the NGOs failing to represent migrants' interests, promote migrants' full access to social and

'Chilean NGOs are constrained by structural and organizational barriers to become agents of social justice for migrants in Chile.'

political rights, or broaden the sense of belonging and entitlement of migrants in Chilean society. Furthermore, NGOs fail to incorporate the knowledge and empowerment that migrants accumulate over time.

Chilean NGOs are constrained by structural and organizational barriers to become agents of social justice for migrants in Chile. The first stumbling block for NGOs—the majority of which rely on exclusively on volunteers and short-term funds—is the absence of continuous funding. The consequences of this financial uncertainty are negatively and widely felt, resulting in charging migrants for services, employee and volunteer rotation, and the inability to accumulate organizational knowledge and to achieve long-term goals.

A second issue, arising from the above, is that Chilean organizations tend to offer only services requested by migrants. Hence, their goals are defined in a reactive fashion, narrowly limited to the particular demands for services made by migrants. Most do not question the denial of citizenship status to migrants, but rather reinforce the restrictive legal, institutional and structural limits of the Chilean state, where 'help' is provided to 'aliens'. The NGO networks are scarce too, and for this reason they are rarely able to capture an agenda beyond pressing demands to incorporate planning for broader citizenship and rights claims.

But perhaps the most compelling barrier faced by NGOs is the rigid legal framework of the Chilean nation-state. The focus of current migration law—which remains from the dictatorship the country endured from 1973 until 1990 – is on national security as threatened

by migration. It does not take into account the reality of increasing migration flows and the need for recognition of migrants' rights. NGOs continue to work under this normative framework with its limited focus on assimilation, rather than fostering an understanding of migratory flows as part of an all-encompassing transnational dynamic.

The positioning of NGOs as service providers, rather

'The positioning of NGOs as service providers, rather than as critical advocates has ... confirmed the migration policies of the Chilean state.'

than as critical advocates has, however unintentionally, confirmed the migration policies of the Chilean state. These policies include Chile's individualistic approach to resolving migrants' needs and demands, which falls far short of what is needed.

More specifically, NGOs fail to understand and communicate migration as a transnational process. Most pay attention solely to individual and care-related needs instead of taking on an advocacy role in the demand for and advancement of collective rights. Migrants differ in the relevance they attribute to rights. Over time, their scope of rights claims broadens as they gain social and cultural capital and experiences.

This does not mean that organizations are silent on migrants' rights; rather their work is just beginning to

'... NGOs fail to understand and communicate migration as a transnational process.'

focus on migrants' access to legal information as well as information on housing, employment and educational rights. Consequently, the promotion of migrants' rights by NGOs in Chile has translated mostly into information workshops on labour law and filing migrants' visa applications, or on the 'know-how' of domestic service, which reinforces the low status of migrant women. None of these activities has challenged the restrictive nature of Chile's labour and immigration policies towards migrants as discussed above.

The failure to challenge government policies towards migrants becomes particularly relevant in the case of Peruvian migrants in Chile, a great number of whom are women. Women migrants are mostly involved in the care sector and domestic work, both low-status occupations. Such low-status jobs tend to reinforce women migrants' social and economic marginalization in Chile. Peruvian migrants' exclusion is very apparent when one examines the intersection of class, gender and race, which impact their life conditions and trajectories. Applying intersectionality as an analytical tool reveals

how the vulnerabilities of migrants' already limited access to social resources are exacerbated on the grounds that they lack citizenship and possess precarious legal status.

Conclusion

The shift for NGOs to advocate for migrants' rights in Chile through legal and social mobilization would represent a significant departure from their current orientation as service providers. As translators of global rules into a locally relevant context, civil society organizations are well positioned to assist in the realization of migrants' rights. Accordingly, organizations can contribute to an effective transnational public sphere that would permit the demand of rights within and beyond the nation-state.

However, in the case of Chilean NGOs, organizational barriers (including limited funding, short-term goals and

'... organizations can contribute to an effective transnational public sphere that would permit the demand of rights within and beyond the nation-state.'

activities, and the absence of networks) as well as structural barriers (such as dated migration legislation with a national security focus) erode their potential to articulate different levels of legal regimes, to advocate for a notion of citizenship that is not territorially based, and to act as brokers or 'translators' between international human rights regimes and local migrants' demands.

Implications and recommendations

In order to improve the protection of cross-border migrants, especially from Peru, the following recommendations are made to the Chilean NGO community.

- *Regard access to citizenship (and rights) as part of a process*

As mentioned above, the 'paper rights' contained within international treaties protecting migrants must be equally matched with the ability to *claim* those rights. In this regard, it can be helpful to regard access to citizenship (and rights) as part of a process.

In the first stage of migration, the most important rights for migrants are their access to legal protection, confirmed by recognizable identification. In the second stage of migration, migrants should be empowered to gain access to work and basic services. In the third

stage of migration, the integration of migrants into Chilean society can take place, informed by the interests of both migrants and Chilean nationals.

- *Civic actors must appreciate their potential to mobilize migrants' rights in Chile*

The accumulation of NGOs' knowledge and observation must be preceded by a consciousness of the field, its possibilities, and the actors and positions involved. Only then will Chilean NGOs be able to challenge narrowly defined notions of membership and entitle-

'The accumulation of NGOs' knowledge and observation must be preceded by a consciousness of the field, its possibilities, and the actors and positions involved.'

ment, especially given the breadth of migratory flows and the potential for legitimization in international regimes. For this, civic actors must also understand the potential to mobilize migrants' rights in Chile. They have an inherent *capacity* to hold states accountable to their national and international legal obligations through legal and social mobilization strategies, and civic actors can fulfil a central role in the *translation* of international rules into local legal contexts.

- *Understand, adapt and capitalize on their strategic positioning within the Chilean policy making framework*

Though Peruvian migrants do use NGOs' services at various stages in their migration, they mostly rely on informal networks and sources of knowledge. This sug-

'... NGOs need to think more strategically, rather than position themselves in a passive, reactive role that will do nothing to challenge the restrictiveness of the Chilean government's labour and migration policies.'

gests that organizations' advocacy has indeed been limited to the role of providing basic assistance to migrants. NGOs can go beyond the provision of services to become a powerful force in the advancement of migrants' rights in Chile, but this requires a conscious recognition of their role as migration advocates in addition to that of service providers. In other words, NGOs need to think more strategically, rather than position themselves in a passive, reactive role that will do nothing to challenge the restrictiveness of the Chilean government's labour and migration policies.

